IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.465 OF 2006

In

CHAMBER SUMMONS NO.557 OF 2005

In

SUMMARY SUIT NO.4808 OF 1999

Francis D'Souza : Plaintiff

V/s.

Bharat Sekhsaria : Defendant

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Mr.Prasad Das i/b. Goenka Law Associates for the defendant in support.

Mr.Vivek Walawalkar i/b. M/s.Nina Chaugule & Associates for the plaintiff to show cause.

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CORAM : S.A.BOBDE, J.

DATE : FEBRUARY 7, 2007.

P.C.

1. This is a Notice of Motion for setting aside the dismissal of Chamber Summons no.557 of 2005 in default. That Chamber Summons was taken out by the defendant-applicant to set aside the ex parte decree dated 26.6.2000.

2. In the affidavit-in-support of this Motion, the defendant has stated that when the matter was listed on 21.6.2005, his Advocate was not present due to oversight. In fact, he became aware that the Notice of Motion was dismissed on 10.2.2006 when he requested the Advocate to find out the status of the Chamber Summons. Even at that time, the Advocate was under a bona fide belief that the Chamber Summons is pending adjudication. Hence, there has been a delay of 195 days.

3. Having regard to the uncontroverted allegations in the affidavit-in-support, I am inclined to allow the Notice of Motion and restore Chamber Summons no.557 of 2005, subject to payment of costs in the sum of Rs.15,000/- by the defendant. Order accordingly.

S.A. BOBDE, J.